

AMENDED IN ASSEMBLY JUNE 7, 2010

AMENDED IN ASSEMBLY JUNE 3, 2010

AMENDED IN SENATE DECEMBER 15, 2009

SENATE BILL

No. 330

Introduced by Senator Yee

(Coauthors: Senators Calderon, DeSaulnier, and Dutton)

(Coauthors: Assembly Members Beall, DeVore, Furutani, Nielsen,
Portantino, Silva, Torrico, and Tran)

February 25, 2009

An act to amend Sections 72670, 72670.5, and 89901 of, and to add Section 92034 to, the Education Code, and to add Section 6254.30 to the Government Code, relating to public records.

LEGISLATIVE COUNSEL'S DIGEST

SB 330, as amended, Yee. Public records: auxiliary organizations.

The California Public Records Act requires state and local agencies to make their records available for public inspection and to make copies available upon request and payment of a fee unless those records are exempt from disclosure.

This bill would require specified entities to comply with the act but would not require these entities to disclose information obtained in the process of soliciting potential donors that has actual or potential independent economic value because it is not generally known to the public or because the individuals can obtain economic value from its disclosure or use.

This bill would specify that it is not the intent of the Legislature to designate specified organizations as state agencies by subjecting these organizations to the requirements of the act.

The bill would exempt from disclosure under the act the names of persons who volunteer services or donate to specified entities if those persons request anonymity. However, the bill would provide that this exemption does not apply if a volunteer or donor meets specified conditions.

This bill would also provide that it is the intent of the Legislature to reject the court's interpretation of state law regarding the application of the act to auxiliary organizations, such as the CSU Fresno Association, at issue in *California State University, Fresno Assn., Inc. v. Superior Court* (2001) 90 Cal.App.4th 810. ~~The bill would also provide that it is the intent of the Legislature that specified organizations be included in the definition of "state agency" solely for the purposes of the California Public Records Act.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 72670 of the Education Code is amended
- 2 to read:
- 3 72670. The governing board of a community college district
- 4 may establish auxiliary organizations for the purpose of providing
- 5 supportive services and specialized programs for the general benefit
- 6 of its college or colleges. As used in this article, "auxiliary
- 7 organization" may include, but is not limited to, the following
- 8 entities:
- 9 (a) Any entity in which any official of a community college
- 10 district participates as a director as part of his or her official
- 11 position.
- 12 (b) Any entity formed or operating pursuant to Article 4
- 13 (commencing with Section 76060) of Chapter 1 of Part 47.
- 14 (c) Any entity that operates a commercial service for the benefit
- 15 of a community college or district on a campus or other property
- 16 of the district.
- 17 (d) Any entity whose governing instrument provides in substance
- 18 both of the following:
- 19 (1) Its purpose is to promote or assist a community college or
- 20 district, or to receive gifts, property, and funds to be used for the
- 21 benefit of the community college or district or any person or
- 22 organization having an official relationship therewith.

(2) Any of its directors, governors, or trustees are either appointed or nominated by, or subject to, the approval of the governing board of the district, an official of the district, or selected, ex officio, from the membership of the student body or the faculty or the governing board or the administrative staff of the district.

(e) Any entity that is designated as an auxiliary organization by the district governing board.

(f) An entity described in subdivision (b), (d), or (e) shall comply with Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code.

(g) Nothing in Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code shall require an entity described in this section to disclose information obtained in the process of soliciting potential donors that has actual or potential independent economic value because it is not generally known to the public or because individuals can obtain economic value from its disclosure or use.

(h) Nothing in this section shall require an entity described in this section to disclose information that is exempt from disclosure pursuant to Section 99040, Section 3426.1 of the Civil Code, Section 1060 of the Evidence Code, or subdivision (k) of Section 6254 of the Government Code.

SEC. 2. Section 72670.5 of the Education Code is amended to read:

72670.5. (a) The Board of Governors of the California Community Colleges may establish auxiliary organizations for the purpose of providing supportive services and specialized programs for the general benefit of the mission of the California Community Colleges.

(b) As used in this article:

(1) "Auxiliary organization" may include, but is not limited to, the following entities:

(A) Any entity whose governing instrument provides in substance both of the following:

(i) That its purpose is to promote or assist the Board of Governors of the California Community Colleges, or to receive gifts, property, and funds to be used for the benefit of the Board of Governors of the California Community Colleges or any person or organization having an official relationship therewith.

(ii) That any of its directors, governors, or trustees are either appointed or nominated by, or subject to, the approval of the Board of Governors of the California Community Colleges or an official of the California Community Colleges, or selected, ex officio, from the membership of the Board of Governors or the administrative staff of the California Community Colleges.

(B) Any entity that, exclusive of the foregoing subdivisions of this section, is designated as an auxiliary organization by the Board of Governors of the California Community Colleges.

(2) “District governing board” includes the Board of Governors of the California Community Colleges, unless the context requires otherwise.

(c) Any agreement between the Board of Governors of the California Community Colleges and an auxiliary organization established pursuant to this section shall provide for full reimbursement from the auxiliary organization to the Board of Governors of the California Community Colleges for any services performed by the employees of the board under the direction of, or on behalf of, the auxiliary organization.

(d) An entity described in paragraph (1) of subdivision (b) shall comply with Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code.

(e) Nothing in Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code shall require an entity described in this section to disclose information obtained in the process of soliciting potential donors that has actual or potential independent economic value because it is not generally known to the public or because individuals can obtain economic value from its disclosure or use.

(f) It is not the intent of the Legislature in enacting subdivision (d) to designate an organization described in paragraph (1) of subdivision (b) as a state agency.

(g) Nothing in this section shall require an entity described in this section to disclose information that is exempt from disclosure pursuant to Section 99040, Section 3426.1 of the Civil Code, Section 1060 of the Evidence Code, or subdivision (k) of Section 6254 of the Government Code.

SEC. 3. Section 89901 of the Education Code is amended to read:

1 89901. As used in this article, the term “auxiliary organization”
2 includes the following entities:

3 (a) Any entity in which any official of the California State
4 University participates as a director as part of his or her official
5 position.

6 (b) Any entity formed or operating pursuant to Article 1
7 (commencing with Section 89300) of Chapter 3.

8 (c) Any entity that operates a commercial service for the benefit
9 of a campus of the California State University on a campus or
10 other property of the California State University.

11 (d) Any entity whose governing instrument provides in substance
12 both of the following:

13 (1) That its purpose is to promote or assist any campus of the
14 California State University, or to receive gifts, property, and funds
15 to be used for the benefit of such campus or any person or
16 organization having an official relationship therewith.

17 (2) That any of its directors, governors, or trustees are either
18 appointed or nominated by, or subject to, the approval of an official
19 of any campus of the California State University, or selected, ex
20 officio, from the membership of the student body or the faculty or
21 the administrative staff of campus.

22 (e) Any entity whose governing instrument provides in substance
23 both of the following:

24 (1) That its purpose is to promote or assist the trustees of the
25 California State University, or to receive gifts, property, and funds
26 to be used for the benefit of the trustees of the California State
27 University or any person or organization having an official
28 relationship therewith.

29 (2) That any of its directors, governors, or trustees are either
30 appointed or nominated by, or subject to, the approval of the
31 trustees or an official of the California State University, or selected,
32 ex officio, from the membership of the trustees or the
33 administrative staff of the California State University.

34 (f) Any entity that, exclusive of the foregoing subdivisions of
35 this section, is designated as an auxiliary organization by the
36 trustees.

37 (g) An entity described in subdivision (b), (d), (e), or (f) shall
38 comply with Chapter 3.5 (commencing with Section 6250) of
39 Division 7 of Title 1 of the Government Code.

(h) Nothing in Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code shall require an entity described in this section to disclose information obtained in the process of soliciting potential donors that has actual or potential independent economic value because it is not generally known to the public or because individuals can obtain economic value from its disclosure or use.

(i) It is not the intent of the Legislature in enacting subdivision (g) to designate an organization described in subdivision (b), (d), (e), or (f) as a state agency.

(j) Nothing in this section shall require an entity described in this section to disclose information that is exempt from disclosure pursuant to Section 99040, Section 3426.1 of the Civil Code, Section 1060 of the Evidence Code, or subdivision (k) of Section 6254 of the Government Code.

SEC. 4. Section 92034 is added to the Education Code, to read:

92034. As used in this article, the term “auxiliary organization” includes the following entities:

(a) An entity in which an official of the University of California participates as a director as part of his or her official duties.

(b) An entity that operates a commercial service for the benefit of a campus of the University of California on a campus or other property of the University of California.

(c) An entity whose governing instrument provides in substance both of the following:

(1) That its purpose is to promote or assist any campus of the University of California, or to receive gifts, property, and funds to be used for the benefit of that campus or any person or organization having an official relationship therewith.

(2) That any of its directors, governors, or trustees are either appointed or nominated by, or subject to the approval of, an official of any campus of the University of California, or serve, ex officio, from the membership of the student body or the faculty or the administrative staff of a campus.

(d) Any entity whose governing instrument provides in substance both of the following:

(1) That its purpose is to promote or assist the Regents of the University of California, or to receive gifts, property, and funds to be used for the benefit of the Regents of the University of

1 California, or any person or organization having an official
2 relationship therewith.

3 (2) That any of its directors, governors, or trustees are either
4 appointed or nominated by, or subject to, the approval of the
5 Regents or an official of the University of California, or serve, ex
6 officio, from the membership of the regents or the administrative
7 staff of the University of California.

8 (e) An entity that is designated by the regents as an auxiliary
9 organization of the University of California.

10 (f) An entity described in subdivision (c), (d), or (e) shall comply
11 with Chapter 3.5 (commencing with Section 6250) of Division 7
12 of Title 1 of the Government Code.

13 (g) Nothing in Chapter 3.5 (commencing with Section 6250) of
14 Division 7 of Title 1 of the Government Code shall require an
15 entity described in this section to disclose information obtained in
16 the process of soliciting potential donors that has actual or potential
17 independent economic value because it is not generally known to
18 the public or because individuals can obtain economic value from
19 its disclosure or use.

20 (h) It is not the intent of the Legislature in enacting subdivision
21 (f) to designate an organization described in subdivision (c), (d),
22 or (e) as a state agency.

23 (i) Nothing in this section shall require an entity described in
24 this section to disclose information that is exempt from disclosure
25 pursuant to Section 99040, Section 3426.1 of the Civil Code,
26 Section 1060 of the Evidence Code, or subdivision (k) of Section
27 6254 of the Government Code.

28 SEC. 5. Section 6254.30 is added to the Government Code, to
29 read:

30 6254.30. (a) Nothing in this chapter shall be construed to
31 require disclosure of the ~~names~~ *name* of a person who volunteers
32 his or her services or donates to an entity described in paragraph
33 (1) of subdivision (b) of Section 72670.5, Section 72670, 89901,
34 or 92034 of the Education Code, if that person requests anonymity.

35 (b) Subdivision (a) does not apply if a volunteer or donor, in a
36 quid pro quo arrangement, receives anything that has a value of
37 five hundred dollars (\$500) or greater in exchange for the services
38 or donation.

39 (c) Subdivision (a) does not apply if a volunteer or donor is a
40 member of the governing board of an entity described in paragraph

1 (1) of subdivision (b) of Section 72670.5 of, or Section 72670,
2 89901, or 92034 of, the Education Code.

3 (d) Subdivision (a) does not apply if a volunteer or donor
4 engages in direct communication for the purpose of influencing
5 the administrative or academic action within the California
6 Community Colleges, the California State University, or the
7 University of California.

8 SEC. 6. It is the intent of the Legislature in enacting this act
9 to construe and clarify the meaning and effect of existing law and
10 to reject the court's interpretation of state law regarding the
11 application of the California Public Records Act (Chapter 3.5
12 (commencing with Section 6250) of Division 7 of Title 1 of the
13 Government Code) to auxiliary organizations, such as the CSU
14 Fresno Association, at issue in California State University, Fresno
15 Assn., Inc. v. Superior Court (2001) 90 Cal.App.4th 810.

16 ~~SEC. 7. It is the intent of the Legislature in enacting this act~~
17 ~~to clarify that an organization described in paragraph (1) of~~
18 ~~subdivision (b) of Section 72670.5, Section 89901, or Section~~
19 ~~92034 of the Education Code be included in the definition of "state~~
20 ~~agency" solely for the purposes of the California Public Records~~
21 ~~Act (Chapter 3.5 (commencing with Section 6250) of Division 7~~
22 ~~of Title 1 of the Government Code).~~

23 ~~SEC. 8.~~

24 SEC. 7. The Legislature finds and declares that Section 6 of
25 this act imposes a limitation on the public's right of access to
26 writings of public officials and agencies within the meaning of
27 Section 3 of Article I of the California Constitution. Pursuant to
28 that constitutional provision, the Legislature makes the following
29 finding to demonstrate the interest protected by this limitation and
30 the need for protecting that interest: The Legislature finds and
31 declares that in order to protect the privacy of individuals who
32 donate to specified entities and request anonymity, it is necessary
33 to exempt those individuals' names from disclosure.